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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,181	09/17/2003	Udo Schutz	PR-50	3957
7590 Friedrich Kueffner Suite 910 317 Madison Avenue New York, NY 10017				
EXAMINER				
GROSSO, HARRY A				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
01/30/2009		PAPER		

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* UDO SCHÜTZ

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Appeal 2008-3538  
Application 10/664,181  
Technology Center 3700

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Decided:

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Before DEMETRA J. MILLS, RICHARD M. LEBOVITZ and  
FRANCISCO C. PRATS, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected the claims for obviousness. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

## STATEMENT OF CASE

The following claims are representative.

1. A transport and storage container for liquids comprising:
  - a pallet-shaped support frame of metal or of an electrically conducting plastic material;
  - an exchangeable inner container of plastic material supported on the support frame and having four sidewalls, a bottom, and a top;

wherein the inner container further comprises an upper closable fill socket and a lower outlet socket with a tapping fixture or an upper closable tapping socket;

- an outer jacket surrounding the inner container and being comprised of grade bars of metal or sheet metal;

wherein the inner container is produced by extrusion blow molding and has a single-layer or multi-layer body;

wherein the inner container has integral electrically conducting sections comprised of an electrically conducting plastic material, wherein the electrically conducting sections form electrical connections between an inner surface and an outer surface of the inner container;

wherein the electrically conducting sections are strips having a thickness matching a wall thickness of the inner container;

wherein the electrically conducting strips extend across at least one of the sidewalls and/or the corner areas between the sidewalls of the inner container.

7. The container according to claim 1, wherein the inner container comprises a permanently antistatic outer layer.

*Cited References*

Schütz	US 6,050,437	Apr. 18, 2000
Lucke	US 2002/0110658 A1	Aug. 15, 2002
BASF AG (translation)	DE 7341620 (DE '620)	Mar. 07, 1974

*Grounds of Rejection*

1. Claims 1, 3 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schütz in view of DE '620.
2. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schütz in view of DE '620 and Lucke.

ISSUE

The Examiner finds that it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the inner container and conduction strip of Schütz with the integrally formed conduction strips within the sidewall of the inner container as taught by DE '620 so as to reduce labor costs. (Ans. 5).

Appellant contends that there is no teaching in Schütz that the electrically conductive strips should have a thickness that is equal to the total thickness of the wall from the outer side to the inner side. (Reply Br. 3.)

The issue is whether the cited prior art teaches the electrically conductive strips should have a thickness that is equal to the total thickness of the wall from the outer side to the inner side.

### FINDINGS OF FACT

1. Schütz discloses a pallet-shaped support frame of metal or of an electrically conducting plastic material (col. 2, ll. 47-50);
2. According to the Examiner, Schütz discloses an exchangeable inner container of plastic material (polyethylene) supported on the support frame and having four sidewalls, a bottom, and a top (col. 2, ll. 40-47); wherein the inner container further comprises an upper closable fill socket (Fig. 1, item 5) and a lower outlet socket with a tapping fixture or an upper closable tapping socket (Fig. 1, item 7). (Ans. 4.)
3. The Examiner finds that Schütz discloses an outer jacket surrounding the inner container and being comprised of grade bars of metal or sheet metal (Fig. 1, item 9); wherein the inner container is a multi-layer body, comprising an exchangeable inner container of synthetic material and a lattice-like sheathing; wherein the inner container has integral electrically conducting sections comprised of an electrically conducting plastic material, wherein said conducting section extends across at least one of the sidewalls (Figs. 1 and 3, item 4). (Ans. 4-5.) The sheathing is wound around or pulled over the inner container. (Schütz, col. 3, ll. 1-5.)
4. The Examiner acknowledges that Schütz fails to teach the electrically conducting plastic material with conducting sections being integral and also forming connections between an inner and outer surface of the inner container, and the conducting strips being the same thickness as the inner wall of the container 5. (Ans. 5.)
5. The Examiner finds that DE '620 teaches a tank with electrically conducting plastic material wherein conducting strips are integral to the tank

sidewalls, and form connections from the inside to the outside of the edge zones of the tank walls so as to transfer internally generated static charge (*see* translated Abstract), wherein the conducting material is molded into the tank; thus, reducing extraneous labor costs associated with connecting a separate conducting strip, as well as simplifying the design. (Ans. 5.)

However, DE'620 does not teach a strip having a thickness matching a wall thickness of the inner container.

6. The conductive grating of '620 is at a distance of 0.2mm to a maximum of 2mm from the inner surface of the container and embedded at a maximum depth of 0.25 mm. (Translation 5, 6, and 7.)

7. The Examiner concludes that:

[I]t would have been obvious to one of ordinary skill in the art at the time of the invention to replace the inner container and separate, all-encompassing conduction strip of Schutz with integrally formed conduction strips within the sidewalls of the inner container as taught by DE 7341620 so as to reduce labor costs, as well as provide design simplification. In addition, with respect to the conducting strip thickness, it would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the conducting strip thickness as such since it has been held that discovering an optimum value of a result-effective variable involves only routine skill in the art.

(Ans. 5-6.)

8. Figures 1 and 3 of the present Specification are reproduced below.

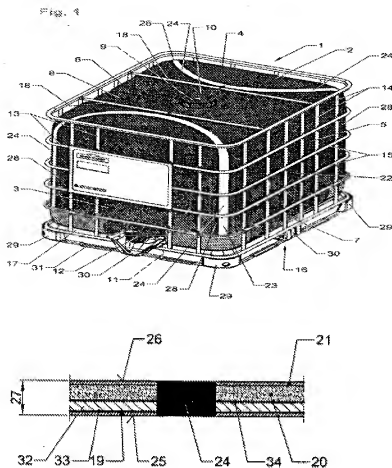


Fig. 3.

Fig. 1 is a perspective illustration of a transport and storage container. Fig. 3 shows a partial cross section of an inner container of six-layer configuration. Element 24 depicts the electrically conducting strips matching a wall thickness of the inner container.

9. Schütz, Figure 1 is reproduced below.

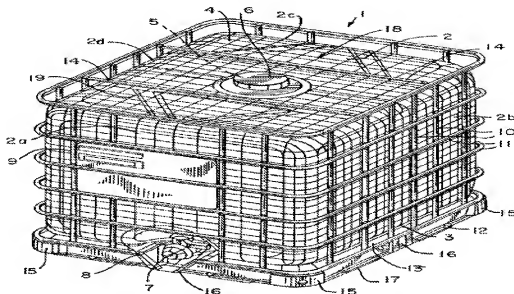


FIG. 1

Schütz, Fig. 1 shows a perspective view of a storage container.

### PRINCIPLES OF LAW

When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – *including all its limitations* – with the teachings of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, “*there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*” *KSR Int'l v. Teleflex Inc.*,



127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

## ANALYSIS

Appellant contends that “the type and manner of the electrical grounding of DE 7341620 and the type and manner of grounding in the presently claimed invention are completely different.” (App. Br. 8.) Appellant argues that a sidewall construction having electrically conducting strips having a thickness matching a wall thickness of the inner container is not taught or suggested by the combination of references cited by the Examiner. (App. Br. 8-9.)

The Examiner argues that the lattice sheathing of Schütz provides an electrically conducting section or strip. (Ans. 7.) However, the sheathing is wound around or pulled over the inner container and is not a thickness of the inner container. (Schütz, col. 3, ll. 1-5.) (FF 3.) The Examiner acknowledges that Schütz fails to teach the electrically conducting plastic material with conducting sections being integral and also forming connections between an inner and outer surface of the inner container, and the conducting strips being the same thickness as the inner wall of the container 5. (FF4.) The Examiner finds that DE '620 teaches a tank with electrically conducting plastic material wherein conducting strips are integral to the tank sidewalls. (FF6.) The conductive grating of '620 is at a distance of 0.2mm to a maximum of 2mm from the inner surface and embedded at a maximum depth of 0.25 mm. (FF 5.) The Examiner has not indicated and we do not find either prior reference discloses electrically

conducting strips having a thickness matching a wall thickness of the inner container as shown in Specification, Figure 3, element 24 and, thus, as claimed.

The Examiner has not provided evidence in the prior art of each element claimed and the obviousness rejection is reversed.

Moreover, with respect to the rejection of claim 7, we do not find that Lucke overcomes the deficiency of the primary combination of references and the rejection of claim 7 is reversed.

#### CONCLUSION OF LAW

In view of the above, we find the cited references in combination fail to teach the electrically conductive strips and should have a thickness that is equal to the total thickness of the wall, as claimed.

The obviousness rejections are reversed.

#### SUMMARY

The obviousness rejections are reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

#### REVERSED

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